

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D114/97

Penalty tax – incorrect salaries tax return – putting down ‘忘記’ as the ‘Total’ income – whether reasonable excuse – section 82A(1)(a) of the Inland Revenue Ordinance.

Panel: Kenneth Kwok Hing Wai SC (chairman), Mitzi Leung Leung Mee Chee and Archie William Parnell Jr.

Date of hearing: 12 January 1998.

Date of decision: 24 February 1998.

In the tax return, the taxpayer declared that the salary earned during the period from 1 April 1995 to 30 March 1996 from his then employer was ‘忘記’, that is, ‘forgot’. The Commissioner of Inland Revenue assessed the taxpayer to additional tax which is 14.44% of the amount of tax involved because the taxpayer had made the incorrect return. The taxpayer appealed on the ground that he put down ‘忘記’ because his former employer had not paid his salaries for March to May 1996 but the taxpayer has not alleged that at the time of completing the return, he actually forgot the amount of his income.

Held:

Even if the taxpayer had not received his pay, what he should have done was to state the amount which he had received so far and the further amount due but not yet received by him. Putting down ‘忘記’ as the total amount of income was quite irresponsible.

Appeal dismissed.

Tong Cheng Yuet Kiu for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

1. This is an appeal against the assessment dated 31 July 1997 by Commissioner of Inland Revenue, assessing the Taxpayer to additional tax under section 82A of the Inland Revenue Ordinance, Chapter 112 (‘the IRO’), in the sum of \$5,000 (‘the Assessment’).

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2. The year of assessment is 1995/96 ('the Relevant Year of Assessment'). The relevant provision is section 82A(1)(a) of the IRO for making an incorrect return by omitting the income of \$319,116. The amount of tax involved is \$34,623. \$5,000 is 14.44% of \$34,623.
3. In the tax return – individuals for the Relevant Year of Assessment, the Taxpayer declared that the salary/wages earned during the period from '1 April 1995 to 30 March 1996' from his then employer where he had been employed as the employer's 'Deputy G M' was '忘記' that is, 'forgot'.
4. By putting '忘記' as the 'Total' income from his then employer, the Taxpayer made an incorrect return. It was incorrect as the total income from his then employer was \$319,161, not '忘記'. The Taxpayer also omitted the sum of \$319,161 which he was required by the IRO to make a return.
5. Section 82A(1)(a) of the IRO provides that 'any person who without reasonable excuse – (a) makes an incorrect return by omitting or understating anything in respect of which he is required by this IRO to make a return ... shall, if no prosecution under section 80(2) or 82(1) has been instituted in respect of the same facts, be liable to be assessed under this section to additional tax of an amount not exceeding treble the amount of tax which has been undercharged in consequence of such incorrect return ... or would have been so undercharged if the return ... had been accepted as correct'.
6. The amount of tax which would have been undercharged if the return had been accepted as correct was \$34,623, and the maximum amount of additional tax would have been \$103,869 or 300% of the amount of tax involved. The Assessment is only 14.44% of the amount of tax involved.
7. The Taxpayer appealed on the ground that he put down '忘記' because his former employer had not paid his salaries for March to May 1996.
8. Significantly, the Taxpayer has not alleged that at the time of completing the return, he actually forgot the amount of his income.
9. When his attention was drawn to the fact that his return was received by the Revenue on 16 August 1996 by which time he would have received the copy of his employer's return, he alleged that he had not received his pay for April and May (of the year following the Relevant Year of Assessment)!
10. Even if the Taxpayer had not received his pay for March 1996, what he should have done was to state the amount which he had received so far and the further amount due but not yet received by him. Putting down '忘記' as the total amount of income was quite irresponsible.

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11. The Taxpayer said he had paid tax on time. If he had not, he would have been liable to a surcharge and recovery action.
12. The Taxpayer also said he had not evaded tax. If he had, the additional tax would not be as low as 14.44%.
13. We have carefully considered all the materials before us and come to the conclusion that the Assessment is neither incorrect nor excessive. We dismiss the appeal and confirm the Assessment.